In the Matter of Application 7561 of Md Wilson To Appropriate From Rock Creek and a Spring In Spring Gulch In Mono County For Agricultural Purposes

Decision A 7561 D - 350
Decided November 14, 1933

Appearances at Hearing Held Movember 13, 1933.

For Applicant Ed Wilson

No Appearance

For Protestant
Walker River Irrigation District

No Appearance

Examiner: Everett N. Bryan, Supervising Hydraulic Engineer For Harold Conkling, Deputy In Charge of Water Rights.

<u>OPINION</u>

Application 7561 was filed by Ed Wilson of Topaz, California, on May 23, 1933, seeking to appropriate a maximum total of 3.0 cubic feet per second of which a maximum of 2.5 cubic feet would be diverted from Rock Creek, also known as Ross Canyon, and a maximum of 1.0 cubic foot per second would be diverted from a spring in Spring Gulch, both being tributaries of West Walker River. The appropriation was sought for irrigation and domestic uses, the diversion from Rock Creek to be made in the NEW SECTION 25 Township 8 N, R 25 East, M.D.B. & M., and the diversion from the spring in Spring Gulch to be made in the NEW NEW Section 25 of the same township and range.

The application was protested by the Walker River Irrigation District upon the ground that there was no unappropriated water in West Walker

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River to which Rock Creek and Spring Gulch are tributary and that the diversion proposed would interfere with prior appropriations made by Walker River Irrigation District. Protest at further cited the fact that it had been made defendant with some 200 other users in the States of Nevada and California in a suit brought by the United States of America on behalf of Walker River Indian Reservation to enjoin any additional use of the waters of Walker River by said defendants.

Application 7561 was completed in accordance with the provisions of the Water Commission Act and the rules and regulations of the Division of Water Resources and being protested was set for hearing. Of this hearing both applicant and protestant received due notice. There was, however, no appearance on behalf of either applicant or protestant and applicant has failed to show cause for failure to appear.

Although notified on August 15, August 29, and September 12, 1933, of the desirability of filing an answer to the protest, applicant not only failed to file such answer but failed to acknowledge receipt of the letters referred to. Protestant was accordingly advised, with copy to the applicant, when notices of the hearing were forwarded on October 19th:

"Applicant has failed to respond to recent correspondence and it is therefore assumed that the
project has been abandoned. We shall be governed
accordingly unless an appearance is made on his behalf at the hearing * * *Under the circumstances,
therefore, there will be no need of appearance by
the Walker River Irrigation District unless you are
further advised."

This course was taken in order to relieve protestant of the cost of an unnecessary appearance at the hearing and explains the cause of failure of protestant to appear.

Applicant received due notice of the hearing by registered mail with a copy of the above notice to protestant and has made no showing in



response thereto which confirms the earlier tentative conclusion of the Division that he had shandoned the project.

It is a matter of general knowledge that the waters of Walker River are fully appropriated during the major portion of the growing season, at least of a normal year. Protestant therefore by its protest establishes a prima facie case and in view of the failure of applicant to make any answer whatsoever it is appropriate that Application 7551 be denied on the ground of lack of unappropriated water.

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Application 7561 to appropriate for irrigation and domestic purposes from Rock Creek and Spring Gulch, tributaries of West Walker River, having been filed and duly completed by Ed Wilson, the application having been protested by Walker River Irrigation District, both applicant and protestant having been duly notified of the time and place of said hearing, and the Division of Water Resources now being fully advised in the premises.

IT IS WERREY CROLLED that said application 7561 be rejected and cancelled upon the records of the Division of Water Resources.

State of California this 14th day of November 1983.

EDWARD HYATT, State Engineer

By Ator - Day

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